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Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

NO. 73-580

NICHOLAS R. RICHARDS and AGNES B. RICHARDS,
Husband and Wife,

Petitioners,

vs.

CROWN POINT COMMUNITY SCHOOL CORPORATION, HAROLD L. WHEELER, WILLIAM R. BARNETT, GLENN R. COOPER, GLENN O. BOTHWELL, and CHARLES I. AYLESWORTH, Members of and Constituting the Board of School Trustees of the Crown Point Community School Corporation,

Respondents.

RESPONDANT'S BRIEF IN ANSWER TO THE PETITION FOR WRIT OF CERTIORARI

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RESPONDENTS' BRIEF IN ANSWER TO THE PETITION FOR WRIT OF CERTIORARI

It is the aim of this brief to point out with a minimum of language, the total lack of merit to the Petition For Writ of Error.

Appendix A to the Petition beginning at page 26 sets forth verbatim the opinion from which the Petitioners seek relief. We will quote from the opinion the parts thereof, that negate any possible jurisdictional question of this court.

Beginning at page 30 of the printed Petition (and on page 451of 290 N.E. 2d) Judge Sharp of the Indiana Court of Appeals stated:

> "The two primary issues presented here for review are as follows:
>
> 1. Whether a prior judgment of the Benton Circuit Court decreeing that the school corporation had a fee simple title to the land in question, and denying appellees' request for quiet title, was res judicata to this action.
>
> 2. Whether a condemnation proceeding commenced under IC 1971, 20-5-23-1 through 20-5-23-4, Ind. Ann. Stat. Sections 28-4004 - 28-4007 by a school corporation results in said corporation acquiring a fee simple title, or a title that will revert to the initial owner of the land if not used for school purposes within five years.

Regardless of the correctness of the judgment of the Benton Circuit Court which quieted title to said real estate in the School Corporation, we must first determine whether said judgment conclusively decided the question of title as between the two parties and is, therefore, res judicata as to this action.

On page 37 of the Petition (page 453 of N.E. 2nd last paragraph) the court concludes as follows:

"Finally, the Richards argue that under the Benton Circuit Court judgment the School Corporation could only have obtained what they received in the initial condemnation case, which was a title subject to forfeiture. The Richards are thus attempting to question the scope and nature of the fee simple title quieted in the School Corporation by the Benton Circuit Court. However, the said judgment not only quieted title to the real estate in the School Corporation, but also granted summary judgment in favor of the School Corporation in regard to the Richards' claim to the fee simple title. Thus, we need not reach and decide the second issue concerning the exact nature of the School Corporation's title as the Richards are precluded from attacking said title.

"The Benton Circuit Court judgment quieting the fee simple title to the real estate stands as a final judgment which conclusively determined the respective rights of the parties in and to the subject real estate.

"We hold that the Benton Circuit Court judgment is res judicata as to any claim by the Richards to the fee simple title to the real estate. The judgment of the trial court is therefore reversed with instructions to enter judgment for the appellant School Corporation."

Where, then is the question that would invoke the jurisdiction of this court? The only question decided by the Indiana Court of Appeals was as stated in the opinion, i.e. whether a previous decree in a previous effort by Petitioners to quiet title, was res judicata.

The Petitioners claim the jurisdiction of this Court is invoked under 28 USC Sec. 1257 as follows:

"Final judgments or decrees rendered by the highest Court of a state in which decision could be had, may be reviewed by the Supreme Court as follows:

(3) By writ of certiorari..... where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution.....or where any title, right, privilege or immunity is specially set up or claimed under the Constitution..."

Nowhere in the Petition is it shown the manner in which the federal question, sought to be reviewed was raised. It is not made to appear by any pleading, by request to charge and exception or by an assignment of error that a federal

question was sought to be reviewed in the appellate courts of Indiana.

If Petitioner had any federal question to present it should have been preserved in the first action to quiet title referred to in the opinion of the Court of Appeals.

However, Petitioner's counsel's failure to preserve any question for appeal in that case made the decision of the Circuit Court of Benton County final.

All as stated in the opinion above referred to.

The Petitioner having failed to preserve any question for appeal in the first case, then sought to try again by filing another quiet title suit. The Indiana Court of Appeals held that the first suit and judgment entered by the Benton Circuit Court was res judicata of the question of title.

Respondents respectfully pray that the Petition For Writ of Error be denied.

Respectfully Submitted,

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